IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

MONDAY, THE 4TH JUNE 2007 / 14TH JYAISHTA 1929

OP.No. 4020 of 2000(C)

PETITIONER:

V.SUKUMARAN, EX-N.K.(Dvr),
AGED 52 YEARS, S/O.K.VASUDEVAN,
THUNDUVILAKATHU VEEDU,
PAKELOOR,
PALLICHAL P.O.,
(VIA) NEMOM,
THIRUVANANTHAPURAM.

BY ADV. SRI.P.V.MOHANAN

RESPONDENTS:

---

1. THE DEPUTY INSPECTOR GENERAL OF POLICE,
WESTERN SECTOR, CENTRAL RESERVE POLICE FORCE,
NAGPUR – 440 019.

2. THE COMMANDANT,
29TH BATTALIAN,
CENTRAL RESERVE POLICE FORCE,
PALLIPURAM.

BY ADV. SRI.P.S.SREEDHARAN PILLAI, SCGSC
SRI.JOHN VARGHESE, ASSISTANT SG
SRI.P.PARAMESWARAN NAIR, ASG

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 04/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP.No. 4020 of 2000(C)

PETITIONER'S EXTS:

EXT.P1 TRUE COPY OF THE APPEAL PETITION DATED 29/06/1999

EXT.P2 TRUE COPY OF THE JUDGMENT IN O.P.No.16911/99 L, DATED 09/07/1999

EXT.P3 TRUE COPY OF THE PROCEEDING NO.R-XIII-25/99-ESTT-I DATED 21/11/1999.

EXT.P4 TRUE COPY OF THE REFERENCE LETTER DATED 13/05/1971

EXT.P5 A TRUE COPY OF THE RECEIPT ISSUED BY THE DISTRICT MEDICAL OFFICER FOR THE SECOND MEDICAL EXAMINATION.

EXT.P6 A TRUE COPY OF THE ORDER SANCTIONING LEAVE FROM 11/11/1980 TO 03/01/1981

EXT.P7 A TRUE COPY OF THE LETTER DATED 18/07/1981 DIRECTING THE PETITIONER TO ATTEND FOR SECOND MEDICAL OPINION BY THE COMMANDANT.

\\TRUE COPY//

THOTTATHIL B. RADHAKRISHNAN, J.

~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~

O.P.No. 4020 of 2000(C)

~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~

Dated this the 4th day of June, 2007

J U D G M E N T

The petitioner, an Ex-Nk.(Dvr) in the Central Reserve Police Force was dismissed from service with effect from 21/03/1984(F.N.), as per order dated 21/03/1984 on ground of unauthorised absence. That order was issued after the competent authority had declared him a deserter, as per order dated 08/11/1982. He was treated as unauthorisedly absent from 29/01/1981 since he did not report for duty. All that the petitioner is able to demonstrate with the aid of the documents now placed on record along with the reply affidavit is that as per Ext.P7, he was directed to report to the D.M.O of Health, Thiruvananthapuram, on 23/07/1981, for a second medical examination. Ext.P6 would show that on the basis of his request, accompanied by medical certificates, the petitioner was granted earned leave of ten days from 11/11/1980 to 20/11/1980 and 39 days commuted leave debitable against 78 days LHP, followed by

five days J/P. By Ext.P6, he stood directed to report for duty on 03/01/1981. Obviously, he did not do that and his leave was extended further as per communication of January 1981, which is part of Ext.P6. Such extension was till 02/02/1981. It was thereafter that Ext.P7 was issued. The petitioner has no case or material to show that he applied for leave and he was granted leave after Ext.P7.

2. Notwithstanding the aforesaid circumstances leading to the above order of dismissal being issued as stated above, on 21/03/1984, he left that decision without being challenged. Ultimately, nearly 15 years thereafter, he filed Ext.P1 appeal and obtained Ext.P2 direction from this Court for consideration of that appeal. On the basis of such direction, Ext.P3 order has been issued by the competent authority after adverting to and considering all relevant facts and factors. That decision is rendered on 21/11/1999.

3. Having regard to the undisputed fact that the petitioner had not applied for leave beyond the period evidenced by

Exts.P5 to P7, and the undisputed fact that the petitioner challenged his order of dismissal in a statutory appeal only about 15 years after the order of dismissal, I am not inclined to exercise the discretionary jurisdiction of this Court in favour of the petitioner. That apart, having regard to the findings which have resulted in the dismissal of the petitioner, which findings have been affirmed in Ext.P3 appellate order, I find no legal infirmity or error of jurisdiction warranting interference.

4. Be that as it may, the learned counsel for the petitioner, relying on the decision in **Shri Bhagwan Lal Arya vs. Commissioner of Police, Delhi and others [2004 (4) SC 560]** and attempted to canvas for the position that even in the case of uniformed services, the Apex Court had taken the view that mere absence from service should not be visited by an order for dismissal. Adverting to the facts of that case, it is easily discernible that the issue considered was as to the proportionality, in the case of a police constable, who had absented himself from duty, unauthorisedly, for about two months. The case in hand relates to unauthorised absence for

more than two years. I am unable to be persuaded to take the view that the matter requires to be interfered with. Having regard to the long period of nearly 15 years that the petitioner took to file an appeal against the order of dismissal, it could also be a case where it can safely be concluded that the petitioner had abandoned any right to be considered to continue in service, that too in a uniformed service, an armed service.

Original petition fails and the same is accordingly, dismissed. No costs.

THOTTATHIL B.RADHAKRISHNAN
Judge

ms

THOTTATHIL B. RADHAKRISHNAN, J.

~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~

O.P.No. 4020 of 2000 (C)

~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~

J U D G M E N T

4th June, 2007